

Record Hill Wind, LLC // Natural Resources Protection Act
Construction of 50.6 megawatt wind energy development - Roxbury

Excerpts from the Department's License Record – Statutory References

- Excerpts from Chapter 661, “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development”
- Excerpts from Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters
- Excerpts from Site Law Rules
- Excerpts from Site Law Permit Application
- Excerpts from Chapter 335: Significant Wildlife Habitat Rules
- Excerpts from Chapter 500: Stormwater Management Rules

Sec. A-7. 35-A MRSA c. 34-A is enacted to read:

CHAPTER 34-A

EXPEDITED PERMITTING OF GRID-SCALE WIND ENERGY DEVELOPMENT

§ 3451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Associated facilities. "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.

2. Department. "Department" means the Department of Environmental Protection.

3. Expedited permitting area. "Expedited permitting area" means:

A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and

B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Regulation Commission in accordance with this chapter.

* **4. Expedited wind energy development.** "Expedited wind energy development" means a grid-scale wind energy development that is proposed for location within an expedited permitting area.

5. Generating facilities. "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines.

6. Grid-scale wind energy development. "Grid-scale wind energy development" means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C.

7. Host community. "Host community" means a municipality, township or plantation in which the generating facilities of an expedited wind energy development are located.

8. Primary siting authority. "Primary siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9; or

B. The Maine Land Use Regulation Commission, in the case of an expedited wind energy development subject to the Maine Land Use Regulation Commission's jurisdiction pursuant to Title 12, chapter 206-A.



9. Scenic resource of state or national significance. "Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath;

B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox;

C. A national or state park;

D. A great pond that is:

(1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987;

E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the Department of Conservation in 1982;

F. A scenic viewpoint located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Conservation designates by rule adopted in accordance with section 3457;

G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a scenic highway; or

H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:

(1) One of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominic, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

(2) A scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with section 3457.

10. Tangible benefits. "Tangible benefits" means environmental or economic improvements attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community to the extent practicable and affected neighboring communities.

11. Wind energy development. "Wind energy development" means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities.

§ 3452. Determination of effect on scenic character and related existing uses

1. Application of standard. In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 or section 480-D, the primary siting authority shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3.

2. Exception; certain associated facilities. The primary siting authority shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development, if the primary siting authority determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit

information regarding this determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

3. Evaluation criteria. In making its determination pursuant to subsection 1, and in determining whether an applicant for an expedited wind energy development must provide a visual impact assessment in accordance with subsection 4, the primary siting authority shall consider:

- A. The significance of the potentially affected scenic resource of state or national significance;
- B. The existing character of the surrounding area;
- C. The expectations of the typical viewer;
- D. The expedited wind energy development's purpose and the context of the proposed activity;
- E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and
- F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A finding by the primary siting authority that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the primary siting authority shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

4. Visual impact assessment; rebuttable presumption. An applicant for an expedited wind energy development shall provide the primary siting authority with a visual impact assessment of the development that addresses the evaluation criteria in subsection 3 if the primary siting authority determines such an assessment is necessary in accordance with subsection 3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of the development's generating facilities that are located more than 3 miles, measured horizontally, from a scenic resource of state or national significance. The primary siting authority may require a visual impact assessment for portions of the development's generating facilities located more than 3 miles and up to 8 miles from a scenic resource of state or national significance if it finds there is substantial evidence that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the scenic resource of state or national significance. Information intended to rebut the presumption must be submitted to the primary siting authority by any interested person within 30 days of acceptance of the application as complete for processing. The primary siting authority shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. B-11. 38 MRSA §484, sub-§3, ¶G is enacted to read:

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. B-12. 38 MRSA §484, sub-§10 is enacted to read:

10. Special provisions; grid-scale wind energy development. In the case of a grid-scale wind energy development, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

- A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;
- B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and
- C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

Sec. B-13. Submission requirements. No later than September 1, 2008, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, jointly and to the extent not already addressed in existing agency guidance, specify the submission requirements for the following matters for applications for wind energy development, including, but not limited to, expedited wind energy development as defined in the Maine Revised Statutes, Title 35-A, section 3451, subsection 4, in accordance with the recommendations of the February 2008 final report of the Governor's Task Force on Wind Power Development in Maine created by Executive Order issued on May 8, 2007, and the provisions of this Act, as applicable:

1. Effects on scenic character and existing uses related to scenic character;
2. Tangible benefits, including postconstruction reporting of tangible benefits realized;
3. Noise and shadow flicker effects;
4. Effects on avian and bat species;

1094

5. Public safety-related setbacks; and

6. Decommissioning plans, including demonstration of current and future financial capacity that would be unaffected by the applicant's future financial condition to fully fund any necessary decommissioning costs commensurate with the project's scale, location and other relevant considerations, including, but not limited to, those associated with site restoration and turbine removal.

Implementation of this section does not require rulemaking under Title 5, chapter 375.

PART C

Sec. C-1. 12 MRSA §685-A, sub-§13 is enacted to read:

13. Additions to expedited permitting area for wind energy development. The commission may add areas in the State's unorganized and deorganized areas to the expedited permitting area for wind energy development in accordance with Title 35-A, section 3453.

Sec. C-2. 12 MRSA §685-B, sub-§2-C is enacted to read:

2-C. Expedited wind energy development; determination deadline. The commission shall consider any wind energy development in the expedited permitting area under Title 35-A, chapter 34-A a use requiring a permit, but not a special exception, within the affected districts or subdistricts and shall render its determination on an application for such a development within 185 days after the commission determines that the application is complete, except that the commission shall render such a decision within 270 days if it holds a hearing on the application. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the commission and may participate fully but is not required to attend hearings when the commission considers an application for an expedited wind energy development as defined in Title 35-A, section 3451. The chair's participation on the commission pursuant to this subsection does not affect the ability of the Public Utilities Commission to submit information into the record of the commission's proceedings.

Sec. C-3. 12 MRSA §685-B, sub-§4, as amended by PL 2005, c. 452, Pt. A, §1, is further amended to read:

4. Criteria for approval. In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may deem consider appropriate.

The commission ~~shall~~may not approve ~~nean~~ application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, sections 4807 to 4807-G, the site location of development laws, Title 38, sections 481 to 490, and the natural resource protection laws, Title 38, sections 480-A to 480-Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies;